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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,541	07/01/2004	Wolfgang Arno Winkler	870-003-171	4305

4955 7590 10/30/2008  
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EXAMINER
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FREAY, CHARLES GRANT

ART UNIT	PAPER NUMBER
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3746

MAIL DATE	DELIVERY MODE
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10/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/500,541	<b>Applicant(s)</b> WINKLER, WOLFGANG ARNO	
	<b>Examiner</b> Charles G. Freay	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 5, 2008 has been entered.

In making the below rejections the examiner has considered and addressed each of the applicant's arguments, including those related to the assignee's prior art material disclosed in the explanatory sheets.

### ***Drawings***

The drawings were received on August 5, 2008. These drawings are approved.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-4, 7-9, 12-14, 16 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgbacher et al in view of Papst et al and further in view of Zentani as set forth in the office action of February 6, 2008.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgbacher et al in view of Papst et al and Zentani as applied to claim 1 above, and further in view of Brown, as set forth in the rejection of February 6, 2008.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgbacher et al in view of Papst et al and Zentani as applied to claim 1 above, and further in view of Simpson, as set forth in the rejection of February 6, 2008.

Claims 10-11 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgbacher et al in view of Papst et al and Zentani as applied to claim 1 above, and further in view of Mizutani, as set forth in the rejection of February 6, 2008.

Claims 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgbacher et al in view of Papst et al and Zentani as applied to claim 1 above, and further in view of Boris "How do I Write and Emulator" Part 1, R1.00, as set forth in the rejection of February 6, 2008.

### ***Response to Arguments***

Applicant's arguments filed August 5, 2008 have been fully considered but they are not persuasive. The applicant argues that the device of Zentani has little or no relation to the fan device as claimed and goes on to note a number of structural differences between the Zentani fan and the fans of Burgbacher et al and Papst et al. Primarily the applicant notes that the Zentani fan is driven by a larger AC motor and as such the control elements are different in size and function. For example, the applicant

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argues that the circuitry of Zentani does not connect to a galvanomagnetic position sensor since in an AC motor the position of the rotor is not critical. Further, the applicant argues that the examiner.

The examiner respectfully disagrees. First, the examiner notes that the rejection does not set forth that the controller of Zentani et al is not being substituted for the controller of Burgbacher et al and Papst et al. The controllers of Burgbacher et al and Papst et al disclose the required controllers connected to a commutated external rotor motor as claimed. Zentani et al is being cited and applied for its teaching of supporting structure for a circuit board of electric motor driven fan. Such structure as shown in Figures 7 and 8 of Zentani clearly teach of a simple mounting structure which allows a board to be easily mounted and replaced (see col. 7 lines 38 and 39). Furthermore, one of ordinary skill in the art would understand from the noted figures that a compact structure is created.

In response to applicant's argument that Zentani is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all of the references are directed to axial fans driven by electric motors and having circuit boards mounted within the housing structure. One of ordinary skill would find the teachings of mounting the boards in each of these references analogous, related and pertinent to the claimed invention.

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Figures 7 and 8 of Zentani clearly teach of a simple mounting structure which allows a board to be easily mounted and replaced (see col. 7 lines 38 and 39). Furthermore, one of ordinary skill in the art would understand from the noted figures that a compact structure is created.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/  
Primary Examiner  
Art Unit 3746

CGF  
October 25, 2008